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OFFICE OF CONSUMER ADVOCATE  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120

Federal Communications Commission  
Office of the Secretary

IRWIN A. POPOWSKY  
Consumer Advocate

(717) 783-5048

July 7, 1992

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ORIGINAL  
FILE

Donna R. Searcy, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

FCC MAIL BRANCH

Re: In the Matter of Petition for  
Clarification and Modification  
of Pay-Per-Call Rules Filed by  
the National Association of  
Attorneys General to be Treated  
as a Petition for Rulemaking  
Docket No. RM-7990

Dear Secretary Searcy:

Enclosed are an original and nine (9) copies of Joint  
Comments of the National Association of State Utility Consumer  
Advocates and the Pennsylvania Office of Consumer Advocate in the  
above referenced proceeding. Also enclosed is one extra copy of  
this document. We would appreciate it if this copy could be time-  
stamped and returned to this office in the self-addressed, stamped  
enveloped.

Sincerely yours,

Philip F. McClelland  
Assistant Consumer Advocate

Enclosure

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Federal Communications Commission  
Office of the Secretary

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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In the matter of  
Petition for Clarification and  
Modification of Pay-Per-Call  
Rules Filed by National  
Association of Attorneys General  
to be Treated as a Petition for  
Rulemaking

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Docket No. RM-7990

FCC MAIL BRANCH

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COMMENTS OF THE  
NATIONAL ASSOCIATION OF  
STATE UTILITY CONSUMER ADVOCATES  
AND THE PENNSYLVANIA  
OFFICE OF CONSUMER ADVOCATE

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Philip F. McClelland  
Assistant Consumer Advocate

Pennsylvania Office of  
Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(717) 783-5048

The National Association of State  
Utility Consumer Advocates  
1133 15th Street, NW, Suite 575  
Washington, D.C. 20005  
(202) 727-3908

Dated: July 7, 1992

## I. Introduction and Summary

The Pennsylvania Office of Consumer Advocate (OCA) and the National Association of State Utility Consumer Advocates (NASUCA) files these Comments concerning the Petition for Clarification and Modification of Pay-Per-Call Rules filed by the National Association of Attorneys General which the FCC has determined to be treated as a Petition for Rulemaking. OCA is also a member of NASUCA and OCA and NASUCA will be generally referred to as NASUCA herein.

The NASUCA fully supports the National Association of Attorneys General (NAAG) petition and request that the FCC issue the relief proposed. The NASUCA has also received complaints from consumers through its member offices concerning the practice of using an 800 number to connect a customer to pay-per-call services. The use of an 800 number for pay-per-call services will certainly lead to confusion on the part of customers if not complete deception. Customers have grown to rely upon 800 numbers as a convenient way of placing long distance phone calls without charge. Allowing pay-per-call services to be imposed on an 800 number call should not be permitted to degrade this type of beneficial service and should be prohibited as NAAG has suggested.

## II. Interest of OCA and NASUCA in the Proposed Regulations.

The Pennsylvania Office of Consumer Advocate is an office created by the Pennsylvania General Assembly to represent the interest of consumers before state and federal agencies and courts which regulate the activities of Pennsylvania public utilities. 71

Pa.Stat.Ann. §309-4(a). The members of NASUCA are also state-designated representatives of public utility consumers in 38 states and the District of Columbia.

As the FCC is now considering the NAAG Petition which will have a direct effect upon the types of telecommunications services offered to consumers and the charges that will be paid by those customers, NASUCA has determined to submit these comments in support of NAAG.

### III. Presentation of Comments

The NASUCA has had experience with the type of pay-per-call services referenced by NAAG. NAAG Pet. at 2-4. In these instances, customers placed calls to an 800 number without anticipating that they could also be charged for those calls. When this has occurred, the NASUCA submits that the advertising for the call does not indicate that pay-per-call charges may be placed against the caller. As a result, customers often anticipate receiving some beneficial information without charge through the call, e.g. whether or not they have won a special prize. During this same call, the customer then receives a pay-per-call message and later receives an unanticipated pay-per-call charge.

NASUCA submits that by using an 800 number, a telecommunication service which has traditionally offered long distance calling without charge, the customer is placed off guard and does not anticipate receiving pay-per-call charges for this same information. Thus, NASUCA concurs with NAAG that the mere use of an 800 number without some further affirmative indication that

the customer clearly wishes to subscribe to and pay for a pay-per-call message, should be prohibited as being misleading or deceptive.

Moreover, the NASUCA suggests that there is no reason why a 900 number could not be used to provide this same type of pay-per-call message with the appropriate warning and disclosure. Under the Commission's pay-per-call rules, whenever a caller places a 900 number call the caller must be advised as to the charges to be applied and the nature of the service before the pay-per-call charge can be imposed upon the customer. In this sense, the introductory preamble message is without charge to the customer. When a customer places a 900 number call, the customer is more likely to be aware that pay-per-call charges may be imposed upon the customer and should be careful to review the preamble offered before the charges begin. In contrast, a customer calling an 800 number has no reason to suspect that a pay-per-call charge will be applied. Thus, the Commission should not permit the use of 800 numbers in order to provide such pay-per-call services as NAAG has advocated.

The NASUCA has also advocated the use of 900 blocking in order to avoid the type of pay-per-call disputes likely to arise by the use of these services, particularly where they are used by individuals not authorized to place such calls, e.g. children. See, NASUCA Resolution 1990-15 as attached, which discusses consumer lack of understanding concerning the imposition of 900 number charges and recommends the offering of 900 number blocking,

etc. The Commission has required such blocking as a means of controlling pay-per-call disputes. If such pay-per-call services are also made available through an 800 number, the efficacy of 900 blocking to avoid pay-per-call disputes is obviously lost. This serves as an additional reason why this misuse of 800 numbers should not be permitted to occur as NAAG has advocated.

NASUCA also recognizes that NAAG has allowed that some restricted pay-per-call services may be provided over 800 numbers. NAAG proposes that 800 number pay-per-call services may not be provided where the customer's willingness to be billed for that service is determined either through tone generation technology, automatic number identification or billing detail information. However, if the customer is required to provide information concerning the customer's preexisting revolving credit account, as NAAG has advocated is permissible, NASUCA concurs that the act of delivering such charge card information to the pay-per-call service provider demonstrates a great likelihood that the customer understands that a potential charge will be placed against the customer's account. NASUCA suggests that this is a permissible exception to the rule as NAAG advocates in its petition.

NASUCA, however, shares NAAG's concern that the use of tone generation technology, automatic number identification or billing detail information does not clearly indicate the customer's consent. Obviously, automatic number identification or billing detail information can be provided about a customer for billing purposes with no affirmative indication that they have consented to

these charges. Further, if a customer merely has to indicate by a tone generation that the customer wishes to pay for such a service, such a simple method may not fully indicate the customer's consent.

Thus, NASUCA advocates that it is important to approve the NAAG petition in order to effectively regulate pay-per-call services as NASUCA has advocated in the past.

#### IV. Conclusion

The NASUCA submits that the FCC should issue an order providing the relief requested by NAAG in this proceeding.

Respectfully submitted,

  
Philip F. McClelland  
Assistant Consumer Advocate

For: Pennsylvania Office of Consumer  
Advocate and the National Association  
of State Utility Consumer Advocates.

Dated: July 7, 1992

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APPENDIX A

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NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

FCC MAIL BRANCH  
RESOLUTION

**Urging that Congress, the FCC, FTC, and Applicable State and Federal  
Authorities Provide Necessary Consumer Protections Regarding  
the Use of 900 Numbers**

- WHEREAS, the various NASUCA offices have become aware that many consumers have used 900 numbers in order to obtain certain services and have frequently not received the services advertised to be available or the services have turned out to be of little, if any, value;
- WHEREAS, consumers calling 900 numbers have often failed to understand the charges which would occur as a result of the use of such 900 numbers before they have incurred 900 number charges;
- WHEREAS, telephone subscribers have found that persons in their household have incurred substantial charges related to such 900 number calling without their authorization;
- WHEREAS, telephone subscribers are subject to the attempts of interexchange carriers ("IXCs") and local exchange carriers ("LECs") to collect 900 number charges and have been required to pay these charges, despite the fact that they have encountered problems similar to those listed above;
- WHEREAS, the Subcommittee on Telecommunications and Finance of the House of Representatives held hearings concerning H.R. 5671 on September 17, 1990, which concerns the regulation of audiotext communications technology and the provision of 900 number services;
- WHEREAS, regulatory authorities in certain states have begun to take action to protect consumers from 900 number abuses and, in particular, to insure that consumers do not lose their basic telephone service as a result of failure to pay 900 number charges;
- THEREFORE, **BE IT RESOLVED** that NASUCA supports the effective regulation of 900 number services at the state and federal level so as to prevent the misuse of such services and avoid the type of misrepresentation and unfair business practices as discussed, in part, above, and such regulation may include, but not be limited to, 900 number blocking without charge, no loss of telephone service other than, at most, access to 900 number service, effective advertising of 900 number charges in 900 number promotions, and 900 number call preambles disclosing such charges;



BE IT FURTHER RESOLVED that NASUCA urges the Federal Trade Commission ("FTC"), Congress, the Federal Communications Commission ("FCC") and any applicable state and federal authorities to take action so as to make certain that the consumer problems set forth above are effectively eliminated, or in the absence of such effective regulation, that IXCs and LECs should be restricted or prohibited from providing billing and collection services related to 900 number charges;

BE IT FURTHER RESOLVED that NASUCA members authorize its Executive Committee to develop specific positions consistent with the terms of this Resolution on legislation, regulations or any other type of proposal that concerns the subject matter of this Resolution, including the development of any policy papers reflecting NASUCA's position. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any action taken under this provision.

Approved by NASUCA:

Orlando, Florida  
Place

November 13, 1990  
Date

Submitted by:

NASUCA Telecommunications Committee

Committee Members:

Jack Shreve (FL), Chairman

Ron Binz (CO)

Doug Brooks (AZ)

David Conn (IA)

John Glynn (MD)

Martha Hogarty (MO)

Bob Johnson (IN)

Philip McClelland (PA)

Michael McRae (DC)

Richard McIntire (MN)

Phil Shapiro (NY)

Bruce Weston (OH)